

STATE OF NORTH DAKOTA  
NORTH DAKOTA DEPARTMENT OF HEALTH

IN THE MATTER OF: )

Continental Resources, Inc. )

PO Box 1032 )

302 North Independence Street )

Enid, OK 73702 )

ADMINISTRATIVE COMPLAINT

Case No. 09-002 WPC

**IMPORTANT NOTICE**

If Continental Resources, Inc., (CRI) does not serve upon the undersigned an answer to this Administrative Complaint within twenty (20) days after service of this Administrative Complaint, the North Dakota Department of Health (Department) will deem allegations in the Complaint admitted by CRI and will enter an Order in Default against CRI as the facts and law may warrant. If CRI does serve upon the undersigned an Answer to this Complaint within 20 days after service, a hearing on this matter will be scheduled.

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The Department, for its Complaint against CRI states and alleges:

**I. JURISDICTION AND AUTHORITY**

1. This Complaint is instituted under N.D.C.C. ch. 61-28, Control, Prevention, and Abatement of Pollution of Surface Water, and N.D. Admin. Code art. 33-16, Control, Prevention, and Abatement of Pollution of Surface Water, and in procedural compliance with N.D.C.C. ch. 28-32, Administrative Agencies Practice Act.
2. The Department has authority to bring this action under N.D.C.C. §§ 61-28-04, -07, and -08.
3. CRI is an oil and gas exploration and production company authorized to do business in North Dakota. Its principal office is located at 302 North Independence Street,

Enid, OK 73701.

4. CRI is a corporation and is therefore a "person" within the meaning of N.D.C.C. § 61-28-02(5).
5. CRI is subject to the requirements of N.D.C.C. ch. 61-28 and the rules promulgated thereunder.

## **II. STATUTORY AND REGULATORY FRAMEWORK**

### **A. Permit Required for Discharges**

6. North Dakota Century Code § 61-28-06(3) makes it unlawful for a person to discharge any wastes, except as in compliance with N.D.C.C. ch. 61-28 and the rules implementing that chapter.
7. North Dakota Administrative Code § 33-16-01-02 provides that a person must file a national pollutant discharge elimination system (NPDES) application before discharging "any waste through a point source into a surface water."

### **B. Pollution and Degradation of Water Quality Prohibited**

8. North Dakota Century Code § 61-28-06(1)(a) makes it unlawful for a person "[t]o cause pollution of any waters of the state, or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state."
9. North Dakota Century Code § 61-28-06(1)(b) makes it unlawful for a person "[t]o discharge any wastes into any waters of the state, or to otherwise cause pollution, which reduces the quality of such waters below the water quality standards established therefor by the department."
10. North Dakota Administrative Code § 33-16-02.1-11(2) makes it unlawful to discharge into the waters of the state "untreated industrial wastes or other wastes which contain substances . . . which may endanger public health or degrade the water quality of water usage."
11. North Dakota Administrative Code § 33-16-02.1-09 provides for the classification of

the state's surface water and contains the standards with which the various classifications of surface water must comply, including physical and chemical criteria. "[S]treams are classified as the class of water quality which is to be maintained in the specified stream." Appendix I, N.D. Admin. Code Ch. 33-16-02.1.

12. North Dakota Administrative Code § 33-16-02.1-08(1)'s narrative water quality standards require waters of the state to be free from: floating oil or scum attributable to industrial or other discharges in amounts that are "unsightly or deleterious"; substances attributable to industrial or other discharges that are in concentrations or combinations "toxic or harmful to humans, animals, plants, or resident aquatic biota"; and "oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters."

### **C. Definitions**

13. The term "discharge" is defined as "the addition of any waste to state waters from any point source." N.D.C.C. § 61-28-02(3).
14. The term "point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure . . . from which wastes are or may be discharged." N.D.C.C. § 61-28-02(6).
15. The term "pollution" is defined as "the manmade or man-induced alteration of the physical, chemical, biological, or radiological integrity of any waters of the state." N.D.C.C. § 61-28-02(7).
16. The term "wastes" is defined as "all substances which cause or tend to cause pollution of any waters of the state . . . ." N.D.C.C. § 61-28-02(10).
17. The term "waters of the state" is defined as "all waters within the jurisdiction of this state including all streams . . . ." N.D.C.C. § 61-28-02(11).

#### **D. Penalty**

18. North Dakota Century Code § 61-28-08(4) provides that a person who violates N.D.C.C. ch. 61-28 or a “rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed five thousand dollars per day per violation.”

#### **E. Environmental Emergency Cost Recovery**

19. Under N.D.C.C. § 23-31-01, the Department “may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of [N.D.C.C. ch. 61-28].”
20. An “environmental emergency” is “a release into the environment of a substance requiring an immediate response to protect public health or welfare or the environment from an imminent and substantial endangerment and which is in violation of [N.D.C.C. ch. 61-28].” N.D.C.C. § 23-31-01.

### **III. COUNTS ONE THROUGH TEN: LITTLE BEAVER CREEK SPILL**

21. The allegations in paragraphs 1 – 20 are realleged.
22. At all times relevant to this Administrative Complaint, CRI owned and operated a salt brine flowline that crosses under Little Beaver Creek in the NE1/4 of the NW1/4 of Section 18, T132N, R106W, Bowman County, North Dakota.
23. CRI discovered a leak in the flowline on January 20, 2007, which it reported to the Department on January 21, 2007.
24. Department employees went to the spill site to inspect the site and observe CRI's clean-up.
25. The leak was caused by an integrity failure where a three-inch diameter fiberglass pipe entered a twelve-inch steel pipe passing under Little Beaver Creek in the NE1/4 of the NW1/4 of Section 18, T132N, R106W, Bowman County, North Dakota.

26. As a result of the leak, approximately 210,000 gallons of salt brine, with small quantities of crude oil and crude oil and water emulsion, was released from the salt brine flowline into Little Beaver Creek.
27. The spill caused an oily residue to form on the ice covering Little Beaver Creek for a distance of approximately 250 feet downstream from the salt brine entry point.
28. Little Beaver Creek is a water of the state within the meaning of N.D.C.C. § 61-28-02(11).
29. The leak was a "discharge" within the meaning of N.D.C.C. § 61-28-02(3).
30. The flowline is a "point source" within the meaning of N.D.C.C. § 61-28-02(6).
31. The salt brine, crude oil, and crude oil and water emulsion caused "pollution" of Little Beaver Creek within the meaning of N.D.C.C. § 61-28-02(7).
32. The salt brine, crude oil, and crude oil and water emulsion are "wastes" within the meaning of N.D.C.C. § 61-28-02(10).

#### **COUNT ONE**

33. CRI did not have a NPDES permit to discharge wastes into Little Beaver Creek and had not filed a completed permit application at the time of the discharge, as required by N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.
34. CRI discharged wastes into Little Beaver Creek for at least one day.
35. CRI's discharge of waste into Little Beaver Creek without a NPDES permit or completed permit application violated N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.

#### **COUNTS TWO – NINE**

36. Little Beaver Creek is designated as a Class III stream. Appendix I, N.D. Admin. Code Ch. 33-16-02.1.
37. The salt brine and other substances released into Little Beaver Creek exceeded eight of the numeric standards for Class III streams, as shown in the following chart:

Parameter Violation Chart - Little Beaver Creek				
Continental Resources Brine Release 1/2007				
Parameter	Released Concentration	ND Water Quality Standard		
		Standard	Aquatic Life Criteria	
			Acute <sup>1</sup>	Chronic <sup>2</sup>
Chloride	39100 mg/L	250 mg/L		
Sulfate	826 mg/L	750 mg/L		
Ammonia	81.4 mg/L		39.16 <sup>4</sup> mg/L	15.29 <sup>4</sup> mg/L
Barium	1.28 mg/L	1.0 mg/L		
Boron	160 mg/L	0.75 mg/L		
Copper	251 µg/L		51.7 <sup>3</sup> µg/L	30.5 <sup>3</sup> µg/L
Selenium	97.1 µg/L		20.0 µg/L	5.0 µg/L
Silver	43 µg/L		41.0 <sup>3</sup> µg/L	
1 -	Acute Standard -- means the one-hour average concentration does not exceed the listed concentration more than once every three years.			
2 -	Chronic Standard -- means the four-day average concentration does not exceed the listed concentration more than once every three years.			
3 -	Hardness dependent criteria based on a CaCO <sub>3</sub> hardness of 400 mg/L.			
4 -	Ammonia Standard is based on toxicity related to temperature and pH of the water.			

38. These eight numeric standards were each exceeded for at least six days.
39. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for chloride in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
40. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for sulfate in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).

41. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for ammonia in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
42. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for barium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
43. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for boron in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
44. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for copper in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
45. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for selenium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).
46. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's numeric water quality standard for silver in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2).

**COUNT TEN**

47. The spill caused Little Beaver Creek's waters to exceed N.D. Admin. Code § 33-16-02.1-08(1)'s narrative water quality standards because the discharge was in

concentrations or combinations "toxic or harmful to humans, animals, plants, or resident aquatic biota" and caused "a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines."

48. The narrative water quality standards were exceeded for at least six days.
49. CRI's discharge of wastes into Little Beaver Creek caused pollution of the state's waters and exceeded the Department's narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2).

#### **IV. COUNTS ELEVEN AND TWELVE: HORSE CREEK SPILL**

50. The allegations in paragraphs 1 – 20 are realleged.
51. At all times relevant to this Complaint, CRI owned and operated in Township 130 North, Range 105 West, Bowman County, North Dakota, a crude oil flowline between CRI's Horse Creek Ranch 1-25 production well, located in the SW¼ of the SW¼ of Section 25, and the Rattlesnake Central Tank Battery, located in the NE¼ of the NE¼ of Section 23.
52. On or before May 1, 2008, the flowline began leaking crude oil in the NE¼ of the NE¼ of Section 26, T130N, R105W. The crude oil flowed down a short ravine, into an intermittent tributary, and then into Horse Creek.
53. Neal Bucholz, who leases the land where the spill occurred, discovered the leaking crude oil flowline on May 19, 2008, and put the Horse Creek Ranch 1-25 production well into emergency shutdown.
54. Mr. Bucholz and CRI both notified the Department of the spill on May 19, 2008.
55. Department employees went to the spill site to inspect the site and to observe CRI's clean-up.
56. The leak was caused by a defect that developed over time in the three-inch fiberglass crude oil flowline.
57. The spill caused floating crude oil to accumulate on the water surface, and it caused



sludge to accumulate on and to settle on and discolor stream banks for up to 5.8 stream miles, from the NE1/4 of Section 26, T130N, R105W, to the middle of Section 16, T130N, R105W.

58. The spill was an "environmental emergency," requiring "an immediate response to protect . . . the environment from an imminent and substantial endangerment." N.D.C.C. § 23-31-01.

59. Department's costs associated with responding to this environmental emergency are: \$6,936.61 for personnel, \$2,438.13 for fringe benefits and \$4,788.81 for travel.

60. Horse Creek is a water of the state within the meaning of N.D.C.C. § 61-28-02(11).

61. The leak was a "discharge" within the meaning of N.D.C.C. § 61-28-02(3).

62. The flowline is a "point source" within the meaning of N.D.C.C. § 61-28-02(6).

63. The crude oil caused "pollution" of Horse Creek within the meaning of N.D.C.C. § 61-28-02(7).

64. The crude oil is a "waste" within the meaning of N.D.C.C. § 61-28-02(10).

#### **COUNT ELEVEN**

65. CRI did not have a NPDES permit to discharge wastes into Horse Creek and had not filed a complete permit application at the time of the discharge, as required by N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.

66. CRI discharged wastes into Horse Creek for at least eleven days.

67. CRI's discharge of waste into Horse Creek without a NPDES permit or completed permit application violated N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02.

#### **COUNT TWELVE**

68. The spill caused Horse Creek's waters to exceed N.D. Admin. Code § 33-16-02.1-08(1)'s narrative water quality standards because Horse Creek had floating oil or scum attributable to industrial or other discharges in amounts that are "unsightly or deleterious," the discharge was in concentrations or combinations "toxic or harmful

to humans, animals, plants, or resident aquatic biota," and the discharge caused "sludge or emulsion" to be deposited on and discoloration of the adjoining shoreline.

69. Crude oil from the spill caused Horse Creek's water to exceed the narrative water quality standards until at least June 26, 2008.

70. CRI's discharge of waste into Horse Creek caused pollution of the state's waters and caused the state's waters to exceed the Department's narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2).

WHEREFORE, the Department requests an order

1. Imposing a civil penalty of \$5,000 on CRI for CRI's discharge of waste into Little Beaver Creek without a NPDES permit or completed permit application in violation of N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02 (Count One).
2. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for chloride in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Two).
3. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for sulfate in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Three).
4. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for ammonia in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-

11(2) (Count Four).

5. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for barium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Five).
6. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for boron in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Six).
7. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for copper in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Seven).
8. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for selenium in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Eight).
9. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's waters to exceed the numeric water quality standard for silver in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-09 and 33-16-02.1-11(2) (Count Nine).
10. Imposing a civil penalty of \$30,000 on CRI for causing Little Beaver Creek's

waters to exceed the narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2) (Count Ten).

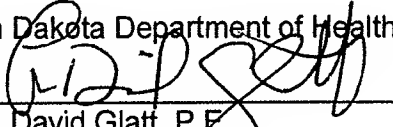
11. Imposing a civil penalty of \$55,000 on CRI for CRI's for CRI's discharge of waste into Horse Creek without a NPDES permit or completed permit application in violation of N.D.C.C. § 61-28-06(3) and N.D. Admin. Code § 33-16-01-02 (Count Eleven).

12. Imposing a civil penalty of \$98,500 on CRI for causing Horse Creek's waters to exceed the narrative water quality standards in violation of N.D.C.C. § 61-28-06(1) and N.D. Admin. Code §§ 33-16-02.1-08(1) and 33-16-02.1-11(2) (Count Twelve);

13. Requiring CRI to pay the Department's costs of \$14,163.55 incurred in the assessment and monitoring of the Horse Creek spill under N.D.C.C. § 23-31-01; and

14. For such other and further relief as appropriate.

Dated this 16 day of June, 2009.

North Dakota Department of Health  
By:   
L. David Glatt, P.E.  
Environmental Chief

STATE OF NORTH DAKOTA  
NORTH DAKOTA DEPARTMENT OF HEALTH

IN THE MATTER OF: )

Continental Resources, Inc. )  
PO Box 1032 )  
302 North Independence Street )  
Enid, OK 73702 )

AFFIDAVIT OF SERVICE  
BY CERTIFIED MAIL

Case No. 09-002 WPC

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH ) ss.

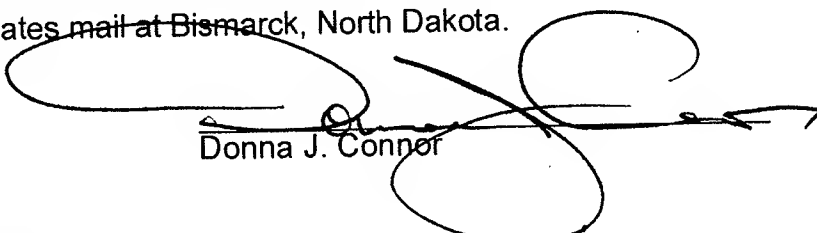
Donna J. Connor states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

2. I am of legal age and on the 17<sup>th</sup> day of June, 2009, I served the following **COMPLAINT**, upon Continental Resources, Inc., through its registered agent, CT Corporation System, through its registered agent, Jonathan Sanstead, by placing a true and correct copy thereof in an envelope addressed as follows:

Jonathan Sanstead  
Registered Agent  
314 East Thayer Ave.  
PO Box 400  
Bismarck, ND 58502-0400

and depositing the same, with postage prepaid, certified mail, restricted delivery, return receipt requested, in the United States mail at Bismarck, North Dakota.

  
Donna J. Connor

Subscribed and sworn to before me  
this 17<sup>th</sup> day of June, 2009.

  
Notary Public

JOLENE J. THIEL  
Notary Public  
State of North Dakota  
My Commission Expires April 5, 2011

BEFORE THE  
STATE DEPARTMENT OF HEALTH  
STATE OF NORTH DAKOTA

IN THE MATTER OF:

)

)

**ADMINISTRATIVE CONSENT AGREEMENT**

Continental Resources, Inc.

)

PO Box 1032

)

302 North Independence Ave.

)

Enid, OK 73702

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**Case No. 09-002 WPC**

The North Dakota Department of Health ("Department"), together with Continental Resources, Inc. ("Respondent"), agree to settle this administrative action on the following terms:

**PRELIMINARY STATEMENT**

- I. Department is the state agency responsible for administering and enforcing the state's water pollution laws, N.D.C.C. ch. 61-28 and N.D. Admin. Code art. 33-16, and has the authority to enter into this Administrative Consent Agreement ("Agreement") under N.D.C.C. chs. 61-28 and 28-32.
- II. Respondent is an oil and gas exploration and production company authorized to do business in North Dakota. Its principal office is located at 302 North Independence Avenue, Enid, OK 73701.
- III. The parties enter this Agreement to resolve the alleged violations identified herein and avoid the expense of litigation. By entering into this Agreement, Respondent does not admit to any of the allegations contained herein or in any of the Department's notices of violation or the Administrative Complaint described herein nor does Respondent waive any defenses, on any grounds related to claims that are not resolved by this Agreement.
- IV. Respondent did not benefit from any of the alleged incidents and has incurred significant expenses and losses as a result of the alleged incidents

**BACKGROUND**

**The Department Makes the Following Allegations:**

- V. Respondent is subject to the requirements of N.D.C.C. ch. 61-28 and the rules promulgated thereunder.

- VI. On Saturday, January 20, 2007, approximately 210,000 gallons of salt brine water and oily residue was inadvertently released from a salt brine flowline owned and operated by Respondent. The release occurred where the salt brine flowline crosses under Little Beaver Creek in the NE1/4NW1/4 of Section 18, T132N, R106W, Bowman County, North Dakota. The released salt brine had a concentration of 64,560 milligrams per liter (mg/L) of total dissolved solids, 39,100 mg/L chloride, 19,500 mg/L sodium, 81.4 mg/L ammonia (as nitrogen), 160 mg/L boron, 16.2 µg/L (micrograms per liter) chromium, 251 µg/L copper, 140 µg/L nickel, 97.1 µg/L selenium, 1,280 µg/L barium, and several other trace elements that exceed the North Dakota Water Quality Criteria, as measured in a sample collected by the Department from the still slightly leaking pipeline on January 23, 2007.
- VII. On Monday, May 19, 2008, another inadvertent release of crude oil and salt brine occurred from a crude oil flowline owned and operated by Respondent was discovered in Bowman County, North Dakota. The flowline runs between Respondent's Horse Creek Ranch 1-25 production well and the Rattlesnake Central Tank Battery. On or before May 1, 2008, the flowline began leaking crude oil in the NE1/4NE1/4 of Section 26, T130N, R105W. The release contaminated up to 5.8 stream miles of Horse Creek with crude oil, from the NE1/4 of Section 26, T130N, R105W, to the middle of Section 16, T130N, R105W. Respondent conducted clean up and repair operations from May 19 until June 26, 2008. Respondent completed disposal of contaminated materials to approved locations prior to August 25, 2008.
- VIII. Department issued a notice of violation on October 1, 2007, for the Little Beaver Creek spill, docketed as Case No. 07-005 WPC. Department issued a second notice of violation on September 18, 2008, for the Horse Creek spill, docketed as Case No. 08-007 WPC. The Department served an Administrative Complaint on June 16, 2009 (docketed as Case No. 09-002 WPC) to address both notices of violation.
- IX. Respondent's inadvertent but unauthorized discharge of contaminant-containing water into Little Beaver Creek violated N.D.C.C. § 61-28-06 and N.D. Admin. Code §§ 33-16-01-02; 33-16-02.1-08; 33-16-02.1-09; and 33-16-02.1-11(2).
- X. Respondent's inadvertent but unauthorized discharge of crude oil into Horse Creek violated N.D.C.C. § 61-28-06 and N.D. Admin. Code §§ 33-16-01-02; 33-16-02.1-08; and 33-16-02.1-11(2).

### **SETTLEMENT TERMS**

- XI. Respondent agrees to pay a civil penalty of One Hundred Thousand Dollars (\$100,000), Sixty-five Thousand Dollars (\$65,000) of which shall be suspended according to the provisions of paragraph XII. Respondent agrees to pay the remaining Thirty-five Thousand Dollars (\$35,000) upon execution of this Agreement. Payment shall be by check in the amount of \$35,000 made payable to the State Department of Health.
- XII. Sixty-five Thousand Dollars (\$65,000) of the penalty shall be assessed against Respondent or dismissed upon the following conditions:
- a. Thirty-two Thousand Five Hundred Dollars (\$32,500) shall be suspended and ultimately dismissed if Respondent has no further spills or releases, which impact waters of the state, for one year, beginning on August 1, 2008, and ending July 31, 2009. Department agrees not to seek to collect this suspended penalty for any violations that the Department is currently investigating or may have occurred between April 10, 2009, and April 22, 2009, in Bowman County, North Dakota, at the following well sites: Lowe 44-9; Harry 22-15; JTD 20-14; JTD 1-10; Nourine 24-30; and Davis 44-32. This does not limit Department's right to bring a separate enforcement action for any such violations at those well sites.
  - b. Thirty-two Thousand Five Hundred Dollars (\$ 32,500) of the penalty shall be suspended and ultimately dismissed if Respondent has no further spills, which impact waters of the state, for a second year, beginning August 1, 2009, and ending July 31, 2010.
- XIII. Respondent agrees to pay Department's documented costs relating to its assessment and monitoring of the spill and remediation through the time of signing of this agreement in the amount of \$14,163.55 to be deposited into the Environmental Quality Restoration Fund, as authorized in N.D.C.C. ch. 23-31. Payment shall be made upon execution of this Agreement by check in the amount of \$14,163.55 made payable to the State Department of Health, Environmental Quality Restoration Fund.

### **ADDITIONAL TERMS**


- XIV. Respondent agrees that it was properly notified of the alleged violations listed herein.
- XV. Respondent acknowledges that, with regard to the alleged violations listed herein, it is knowingly and voluntarily waiving the rights and procedures that would otherwise protect it and that it would have in any formal administrative



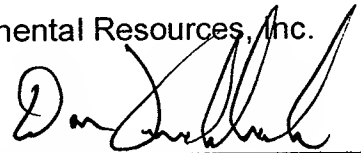
adjudicatory proceeding or any civil action in a court of law, including the right to the filing of a notice of intent, to present evidence and witnesses on its behalf, to cross-examine Department's witnesses, to a jury trial, and to administrative and judicial review.

- XVI. Respondent agrees that an administrative order may be entered incorporating the Agreement's terms, and agrees that the order may be enforced by a court of competent jurisdiction. Respondent agrees that it will not contest Department's jurisdiction to compel compliance with the order in any subsequent enforcement proceedings.
- XVII. Any judicial action brought by either party to enforce or adjudicate any of the Agreement's terms, or an order incorporating the Agreement's terms, shall be brought in the Burleigh County Court in the State of North Dakota (South Central Judicial District).
- XVIII. If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.
- XIX. The Agreement shall constitute full settlement of the alleged violations listed herein, but does not limit Department from taking enforcement action concerning other violations.
- XX. No failure by Department to enforce any of the Agreement's terms after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce all of the Agreement's terms on any further breach or default.
- XXI. This Agreement constitutes the entire agreement between the parties. Except as otherwise provided in the Agreement, no amendment, alteration, or addition to the Agreement shall be binding unless reduced to writing and signed by both parties.
- XXII. Except as provided in paragraph XIII above, each party shall bear its own costs incurred in this action, including attorney fees.
- XXIII. Respondent enters into the Agreement freely and voluntarily.
- XXIV. The Agreement becomes effective when signed by both parties.

DEPARTMENT OF HEALTH

  
By: L. David Glatt, P.E.  
Environmental Chief


8/3/09  
Date

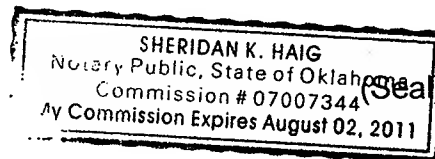
Continental Resources, Inc.  
  
By: Don Fischbach,  
General Counsel

30 July 2009  
Date

STATE OF OKLAHOMA            )  
  ) ss.  
COUNTY OF GARFIELD        )

The foregoing instrument was acknowledged before me this on this 30<sup>th</sup> day of July, 2009, by Don Fischbach, General Counsel of Continental Resources, Inc., an Oklahoma corporation, on behalf of the corporation.

  
Notary Public  
My commission expires 8-02-11



**BEFORE THE  
STATE DEPARTMENT OF HEALTH  
STATE OF NORTH DAKOTA**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>Continental Resources, Inc.</b>	)	<b>NOTICE OF VIOLATION</b>
<b>PO Box 1032</b>	)	<b>Case No. 08-007 WPC</b>
<b>302 North Independence Street</b>	)	
<b>Enid, OK 73702</b>	)	<b>N.D.C.C. Ch. 61-28</b>

Pursuant to the above-referenced statutory authority, the North Dakota Department of Health (Department) hereby makes the following findings:

I.

That this is an administrative action instituted pursuant to North Dakota Century Code (N.D.C.C.) Chapter 61-28, Control, Prevention, and Abatement of Pollution of Surface Waters, and North Dakota Administrative Code (N.D. Admin. Code) Article 33-16, Control, Prevention, and Abatement of Pollution of Surface Water rules, and in procedural compliance with N.D.C.C. Chapter 28-32, Administrative Agencies Practice Act.

II.

That Continental Resources, Inc., has its principal office located at 302 North Independence Street, Enid, OK 73701.

III.

N.D.C.C. § 61-28-06 provides in part:

61-28-06. Prohibitions.

1. It shall be unlawful for any person:

- a. To cause pollution of any waters of the state, or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
  - b. To discharge any wastes into any waters of the state, or to otherwise cause pollution, which reduces the quality of such waters below the water quality standards established therefor by the department.
- 2. It is unlawful for any person to carry on any of the following activities unless the person holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
  - ...
  - c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
  - d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.

#### IV.

N.D. Admin. Code § 33-16-02.1-08(1)(a)(2)(4)(5) provides in part:

#### **33-16-02.1-08. General water quality standards.**

- 1. Narrative standards.
  - a. ...
    - (2) Free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges or agricultural practices in sufficient amounts to be unsightly or deleterious.
    - ...
    - (4) Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations

or combinations which are toxic or harmful to humans, animals, plants, or resident aquatic biota.

- (5) Free from oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters.

## V.

N.D. Admin. Code § 33-16-02.1-11 states in part:

**33-16-02.1-11. Discharge of wastes.** On-surface discharges. The following are general requirements for all waste discharges. . . :

...

2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the water quality or water usage shall be discharged into the waters of the state.

## VI.

N.D. Admin. Code § 33-16-01-12 states in part:

**33-16-01-12. Terms and conditions of national pollutant discharge elimination system permits.**

1. The following discharges into the waters of the state are prohibited:
  - a. Any radiological, chemical, or biological warfare agent or high-level radioactive waste.

...

## VII.

On Monday, May 19, 2008, rancher Neal Bucholz reported to the Department the discovery of a continuing release of crude oil into Horse Creek at T130 N, R105W,

Section 26 in Bowman County, running through a pasture he leased from Deborah Eggland, and extending into North Dakota State School Land at T130N, R105W, Section 16, which he also leases as pasture land. The leak of crude oil and produced water was the apparent result of a defect that developed over time in a three-inch, fiberglass, flow line from the Horse Creek Ranch 125 production well to the Rattlesnake CTB (Central Tank Battery). The well was put into emergency shut down by Mr. Bucholz at approximately 9:30 AM, and Continental Resources, Inc., the well owner, was notified.

#### VIII.

It is unclear exactly when the leak began, although oil staining on the creek bank, above the base flow level, indicates that at least one major flow event occurred after the oil first got into Horse Creek. Oil staining on the in-slopes of the creek banks downstream of the entry point was approximately 12 inches above base flow level, as seen on May 20, 2008. The first recorded, significant snow/rain event prior to the discovery of the leak was on May 1, 2008 when 1.18 inches of precipitation was recorded at a weather station a few miles northeast of the leak site. This was a rain and snow event, followed by rain events totaling 0.88 inches on May 6 through 10, which completed the melt of the May 1 snow. This indicates that the leak began sometime prior to May 1, 2008

#### IX.

Continental Resources, Inc. responded to the report by mobilizing the area

supervisor and area foreman to evaluate the extent of the release and organize a response. By calculations of both Continental personnel and the Bowman County Emergency Manager, floating crude oil from the spill impacted the stream banks and water surface for up to 5.8 stream miles, reaching from the northeast quarter of section 26 to the middle of section 16. Following evaluation, Continental mobilized absorbent materials and crews to the location and began recovery efforts in the downstream-most part of the impact zone, working back to a road crossing where they installed a 36-inch underflow weir. Another underflow weir was installed near the west edge of section 23. Rain washed that weir out the section 23 underflow weir on May 24, 2008 and it was not replaced.

During the following 4 weeks, Continental and contract personnel used absorbents and prescribed burns to attempt to remove the crude oil from the stream and stream banks. These efforts were moderately successful, hindered to a significant degree by rain events that caused the stream to become swollen, and with a high silt load. Observations after each event indicated that the silt load entrapped significant amounts of the remaining crude oil and buried it in the creek bottom or on mud flats that were overflowed.

Contaminated soil was excavated from a short ravine down which the oil flowed into an intermittent tributary of Horse Creek and thence into the creek. The ravine was backfilled, graded, seeded, and erosion control matting was stapled down along the length. The contaminated soil was stockpiled in a bermed area at the Rattlesnake CTB. As of August 4, Continental had received approval to dispose of the contaminated soil

at Belle Fourche, South Dakota, and as of August 28, all removal of the contaminated soil stockpile had been completed.

X.

That based on the above paragraphs VII through IX, Continental Resources, Inc.'s unauthorized discharge of crude oil to waters of the state of North Dakota and discharging waste without an NDPDES permit are apparent violations of N.D.C.C. § 61-28-06 and N.D. Admin. Code §§ 33-16-01-02(2)(a)-(b), 33-16-01-12(1)(a), 33-16-02.1-08(1)(a)(2)(4)(5) and 33-16-02.1-11(2)(6).

XI.

THEREFORE, it appearing to the Department that good cause exists to issue a Notice of Violation, Notice is hereby given to Continental Resources, Inc. that the Department believes CRI is in violation of N.D.C.C. ch. 61-28 and N.D. Admin. Code art. 33-16. The Department further finds that a Complaint may be issued pursuant to the provisions of N.D.C.C. ch. 61-28 seeking civil penalties as allowed in N.D.C.C. § 61-28-08.

XII.

THEREFORE, IT IS FURTHER ORDERED that a copy of this Notice of Violation, made and entered by the Department's own motion, be served upon the respondent, Continental Resources, Inc., by certified mail, return receipt requested, through Mark E. Monroe, President.



Dated at Bismarck, North Dakota, this 18th day of September, 2008.

FOR THE DEPARTMENT

A handwritten signature in black ink, appearing to read 'L. David Glatt', written over a horizontal line.

L. David Glatt, Chief, P.E.

Environmental Health Section

**ORIGINAL**

BEFORE THE  
STATE DEPARTMENT OF HEALTH  
STATE OF NORTH DAKOTA

IN THE MATTER OF: )

Continental Resources, Inc. )  
PO Box 1032 )  
302 North Independence Street )  
Enid, OK 73702 )

NOTICE OF VIOLATION  
Case No. 07-005 WPC

N.D.C.C. 61-28

Pursuant to the above-referenced statutory authority, the North Dakota  
Department of Health (Department) hereby makes the following findings:

I.

That this is an administrative action instituted pursuant to North Dakota Century  
Code (N.D.C.C.) Chapter 61-28, Control, Prevention, and Abatement of Pollution of  
Surface Waters, and North Dakota Administrative Code (N.D.A.C.) Article 33-16,  
Control, Prevention, and Abatement of Pollution of Surface Water rules, and in  
procedural compliance with N.D.C.C. Chapter 28-32, Administrative Agencies Practice  
Act.

II.

That Continental Resources, Inc., has its principal office located at 302 North  
Independence Street, Enid, OK 73701

III.

N.D.C.C. § 61-28-06 provides in part:

**61-28-06. Prohibitions.**

1. It shall be unlawful for any person:
  - a. To cause pollution of any waters of the state, or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
  - b. To discharge any wastes into any waters of the state, or to otherwise cause pollution, which reduces the quality of such waters below the water quality standards established therefor by the department.
2. It is unlawful for any person to carry on any of the following activities unless the person holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
  - a. The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto without plans and specifications previously approved by the department.
  - b. Cause a material increase in volume or strength of any wastes in excess of the permissive discharges specified under existing approved plans.
  - c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
  - d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.
3. Notwithstanding any other provisions of this chapter, and except as in compliance with the provisions of this chapter, and any rules and regulations promulgated hereunder, the discharge of any wastes, or the violation of any water quality standards, by any person shall be unlawful. The department may seek injunctive relief for a threatened or continuing violation of a water quality standard, including any violations of the narrative standards, if the department determines that the violation will substantially interfere with or cause or threaten to cause long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community. The authority to seek injunctive relief for a violation of the water quality standards, including violations of the narrative standards,

is limited to the department, after obtaining written approval of the governor, and may not be enforced by any other person.

#### IV.

N.D.A.C. § 33-16-01-02(2)(a)(b) provides in part:

##### **33-16-01-02. Acquisition of data.**

...

2. Any person who commences discharge of any waste through a point source into a surface water or conduct of any activity which requires a valid permit under North Dakota Century Code section 61-28-06 after the effective date of this chapter shall either:
  - a. File a completed national pollutant discharge elimination system application no less than one hundred eighty days prior to the day on which it is desired to commence operation of the waste disposal operation; or
  - b. File a completed national pollutant discharge elimination system application in sufficient time prior to the commencement of waste disposal operations to allow the department to ensure compliance with any applicable water quality standards and effluent standards and the requirements of sections 306 and 208(b) and (c) of the Federal Water Pollution Control Act.

...

#### V.

N.D.A.C. § 33-16-02.1-08(1)(a)(2)(4)(5) provides in part:

##### **33-16-02.1-08. General water quality standards.**

2. Narrative standards.

...

Free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges or agricultural

practices in sufficient amounts to be unsightly or deleterious.

...

- (4) Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to humans, animals, plants, or resident aquatic biota. For surface water, this standard will be enforced in part through appropriate whole effluent toxicity requirements in North Dakota pollutant discharge elimination system permits.
- (5) Free from oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters.

## VI.

N.D.A.C. § 33-16-02.1-11 states in part:

**33-16-02.1-11. Discharge of wastes.** On-surface discharges. The following are general requirements for all waste discharges. . . .

2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the water quality of water usage shall be discharged into the waters of the state.
- ...
6. Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible (701-328-5210) or the North Dakota hazardous materials emergency assistance and spill reporting number (1-800-472-2121) and provide all relevant information about the spill. Depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:

- a. Take immediate remedial measures;
- b. Determine the extent of pollution to waters of the state;
- c. Provide alternate water sources to water users impacted by the spill or accidental discharge; or
- d. Any other actions necessary to comply with this chapter.

## VII.

N.D.A.C. § 33-16-01-12 states in part:

### **33-16-01-12. Terms and conditions of national pollutant discharge elimination system permits.**

1. The following discharges into the waters of the state are prohibited:

- a. Any radiological, chemical, or biological warfare agent or high-level radioactive waste.

...

## VIII.

40 CFR pt. 110, § 110.3 provides:

### **§ 110.3 Discharge of oil in such quantities as “may be harmful” pursuant to section 311(b)(4) of the Act.**

For purposes of section 311(b)(4) of the Act, discharges of chemicals in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that:

- (a) Violate applicable water quality standards; or
- (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

## IX.

On Sunday, January 21, 2007, the Department was notified that a Continental Resources, Inc. pipeline transporting oil field produced salt water failed. The leak was discovered January 20, 2007. The leak occurred due to integrity failure where a three-inch outside diameter fiberglass pipe entered a twelve-inch steel pipe passing under Little Beaver Creek in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 18, T132N, R106W.

## X.

Approximately 210,000 gallons of salt brine water and other material was released into Little Beaver Creek, Bowman County, North Dakota. The salt brine, with small quantities of crude oil and crude oil/water emulsion flowed over the creek bank, melted through the covering ice over a distance of approximately 100 feet, and then mixed with the flowing water of Little Beaver Creek. The released salt water had a concentration of 64,560 milligrams per liter (mg/L) of total dissolved solids, 39,100 mg/L chloride, 19,500 mg/L sodium, 81.4 mg/L ammonia, 160 mg/L boron, 16.2  $\mu\text{g/L}$  (micrograms per liter) chromium, 251  $\mu\text{g/L}$  copper, 140  $\mu\text{g/L}$  nickel, 97.1  $\mu\text{g/L}$  selenium, 1,280  $\mu\text{g/L}$  barium, and several other trace elements that exceed the North Dakota Water Quality Criteria, as measured in a sample collected from the still slightly leaking pipeline on January 23 by the Department. In-stream specific conductivity measurements were taken immediately upstream of the spill and several downstream points. The field recorded, upstream sampling point displayed a reading of 3,590  $\mu\text{S/cm}$  (micro siemens per centimeter). Oily residues were noted on the ice covering the creek for a distance of approximately 250 feet downstream of the brine entry point.

Water quality samples were taken from upstream of the salt water injection point into Little Beaver Creek to the confluence of Little Beaver Creek with the Little Missouri River at Section 31, T133N, R105W. At a point roughly 3 stream miles downstream (approximately 3 stream miles above the Little Missouri River, and approximately 300 feet upstream of a railroad bridge) the field recorded specific conductivity of the flowing creek water was 7,140  $\mu\text{S}/\text{cm}$ . Sampling revealed that contaminants from the spill had reached the Little Missouri River on or before January 23, 2007. A water quality sample collected from Little Beaver Creek, approximately 200 feet upstream of the confluence with the Little Missouri River, at 12:40 on January 23, contained a total dissolved solids concentration of 5,320 mg/L, 2,110 mg/L chloride, 1,610 mg/L sodium, 8.77mg/L boron, 187  $\mu\text{g}/\text{L}$  barium, 20.3  $\mu\text{g}/\text{L}$  copper and 29.6  $\mu\text{g}/\text{L}$  selenium. The field recorded, specific conductivity at that location was 12,060  $\mu\text{S}/\text{cm}$ . Reportedly, no attempt had been made by Continental Resources to contain or capture the released salt water brine before it reached the Little Missouri River.

## XI.

Continental Resources, Inc. began excavating contaminated soil material between the break point and the creek bank on January 23, 2007. The contaminated soil was stockpiled at the location pending disposal arrangements. As of August 2007, the contaminated stockpile has been removed from the flood plain of Little Beaver Creek, and taken to an approved disposal facility.

## XII.

That based on the above-referenced paragraphs IX through XII, Continental



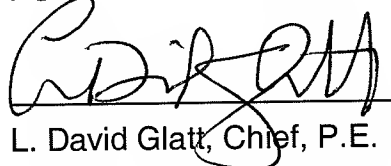
Resources, Inc.'s unauthorized discharge of contaminant-containing water to waters of the state of North Dakota and discharging waste without an NDPDES permit are apparent violations of N.D.C.C. § 61-28-06 and N.D.A.C. §§ 33-16-01-02(2)(a)(b), 33-16-01-12(1)(a), 33-16-02.1-08(1)(a)(2)(4)(5) and 33-16-02.1-11(2)(6).

THEREFORE, it appearing to the Department that good cause exists to issue a Notice of Violation, Notice is hereby given to Continental Resources, Inc. that the Department believes they are in violation of N.D.C.C. ch. 61-28 and N.D.A.C. art. 33-16. The Department further finds that a Complaint may be issued pursuant to the provisions of N.D.C.C. ch. 61-28 seeking civil penalties as allowed in N.D.C.C. § 61-28-08.

THEREFORE, IT IS FURTHER ORDERED that a copy of this Notice of Violation, made and entered by the Department's own motion, be served upon the respondent, Continental Resources, Inc., by certified mail, return receipt requested, through Mark E. Monroe, President.

Dated at Bismarck, North Dakota, this 1 day of October, 2007.

FOR THE DEPARTMENT

A handwritten signature in black ink, appearing to read "L. David Glatt", is written over a horizontal line.

L. David Glatt, Chief, P.E.  
Environmental Health Section

**BEFORE THE  
STATE DEPARTMENT OF HEALTH  
STATE OF NORTH DAKOTA**

**IN THE MATTER OF:**

**Zenergy, Inc.  
One Warren Place  
6100 South Yale Avenue  
Suite 1700  
Tulsa, OK 74136**

**NOTICE OF VIOLATION  
Case No. 06-001 WPC**

**N.D.C.C. 61-28**

Pursuant to the above-referenced statutory authority, the North Dakota Department of Health (Department) hereby makes the following findings:

**I.**

That this is an administrative action instituted pursuant to North Dakota Century Code (N.D.C.C.) Chapter 61-28, Control, Prevention, and Abatement of Pollution of Surface Waters, and North Dakota Administrative Code (N.D.A.C.) Article 33-16, Control, Prevention, and Abatement of Pollution of Surface Water rules, and in procedural compliance with N.D.C.C. Chapter 28-32, Administrative Agencies Practice Act.

**II.**

That Zenergy, Inc., has its principal office located at One Warren Place, 6100 South Yale Avenue, Suite 1700, Tulsa, OK.

**III.**

N.D.C.C. § 61-28-06 provides in part:

**61-28-06. Prohibitions.**

1. It shall be unlawful for any person:
  - a. To cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are

likely to cause pollution of any waters of the state; and

- b. To discharge any wastes into any waters of the state which reduce the quality of such waters below the water quality standards established therefor by the Department.
2. It is unlawful for any person to carry on any of the following activities unless the person holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
- a. The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto without plans and specifications previously approved by the department.
- ...
3. Notwithstanding any other provisions of this chapter, and except as in compliance with the provisions of this chapter, and any rules and regulations promulgated hereunder, the discharge of any wastes by any person shall be unlawful.

#### IV.

N.D.A.C. § 33-16-01-02(2)(a)(b) provides in part:

#### **33-16-01-02. Acquisition of data.**

...

2. Any person who commences discharge of any waste through a point source into a surface water or conduct of any activity which requires a valid permit under North Dakota Century Code section 61-28-06 after the effective date of this chapter shall either:
- a. File a completed national pollutant discharge elimination system application no less than one hundred eighty days prior to the day on which it is desired to commence operation of the waste disposal operation; or
  - b. File a completed national pollutant discharge elimination system application in sufficient time prior to the commencement of waste disposal operations to allow the department to ensure compliance with any applicable water quality standards and effluent standards and the requirements of sections 306 and 208(b) and (c) of the Federal Water Pollution Control Act.

...

## V.

N.D.A.C. § 33-16-02.1-08(1)(a)(2)(4)(5) provides in part:

### **33-16-02.1-08. General water quality standards.**

#### 2. Narrative standards.

...

- (2) Free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges or agricultural practices in sufficient amounts to be unsightly or deleterious.

...

- (4) Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to humans, animals, plants, or resident aquatic biota. For surface water, this standard will be enforced in part through appropriate whole effluent toxicity requirements in North Dakota pollutant discharge elimination system permits.

- (5) Free from oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters.

## VI.

N.D.A.C. § 33-16-02.1-11 states in part:

**33-16-02.1-11. Discharge of wastes.** On-surface discharges. The following are general requirements for all waste discharges. ...

- 2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the water quality of water usage shall be discharged into the waters of the state.

...

6. Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible (701-328-5210) or the North Dakota hazardous materials emergency assistance and spill reporting number (1-800-472-2121) and provide all relevant information about the spill. Depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:
  - a. Take immediate remedial measures;
  - b. Determine the extent of pollution to waters of the state;
  - c. Provide alternate water sources to water users impacted by the spill or accidental discharge; or
  - d. Any other actions necessary to comply with this chapter.

## VII.

N.D.A.C. § 33-16-01-12 states in part:

### **33-16-01-12. Terms and conditions of national pollutant discharge elimination system permits.**

1. The following discharges into the waters of the state are prohibited:
  - a. . . . chemical, . . . waste.
  - . . .

## VIII.

On Thursday, January 5, 2006, the Department was notified that a Zenergy, Inc. pipeline transporting salt water failed. The leak was discovered January 4, 2006. The leak occurred due to a pipeline seam failure where a four-inch outside diameter pipe was fused together. Approximately one million gallons of salt brine water and other material was released. The water had a concentration in excess of 300,000 milligrams per liter of total dissolved solids.

## IX.

A portion of the brine water flow traveled through a stock dam and a beaver dam

and entered Charbonneau Creek. The brine water moving downstream killed fish, aquatic organisms and impacted other beneficial use.

X.

Zenergy, Inc. placed a barrier in Charbonneau Creek near a section line between Sections 33 and 28, 150 North-102 West. An unknown volume of brine water passed this location prior to containment. Brine impacted water was recovered from the creek upstream of the barrier until March 9, 2006, when the barrier was breached by spring melt. Despite contamination recovery efforts by Zenergy, Inc., brine water continues to travel downstream as of June 26, 2006.

XI.

That based on the above-referenced paragraphs VIII through X, Zenergy, Inc.'s unauthorized discharge of contaminant-containing water to waters of the state of North Dakota and discharging waste without an NDPDES permit are apparent violations of N.D.C.C. § 61-28-06 and N.D.A.C. §§ 33-16-01-02(2)(a)(b), 33-16-01-12(1)(a), 33-16-02.1-08(1)(a)(2)(4)(5) and 33-16-02.1-11(2)(6).


THEREFORE, it appearing to the Department that good cause exists to issue a Notice of Violation, Notice is hereby given to Zenergy, Inc. that the Department believes they are in violation of N.D.C.C. ch. 61-28 and N.D.A.C. art. 33-16. The Department further finds that a Complaint may be issued pursuant to the provisions of N.D.C.C. ch. 61-28 seeking civil penalties as allowed in N.D.C.C. § 61-28-08.

THEREFORE, IT IS FURTHER ORDERED that a copy of this Notice of

Violation, made and entered by the Department's own motion, be served upon the respondent, Zenergy, Inc., by certified mail, return receipt requested, through Robert M. Zinke, President.

Dated at Bismarck, North Dakota, this 3rd day of July, 2006.

FOR THE DEPARTMENT

A handwritten signature in black ink, appearing to read "L. David Glatt", written over a horizontal line.

L. David Glatt, Chief, P.E.  
Environmental Health Section

**BEFORE THE  
STATE DEPARTMENT OF HEALTH  
STATE OF NORTH DAKOTA**

**IN THE MATTER OF:**

**Zenergy, Inc.  
One Warren Place  
6100 South Yale Avenue  
Suite 1700  
Tulsa, OK 74136**

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**ADMINISTRATIVE  
CONSENT AGREEMENT**

**Case No. 07-001 WPC**

**PRELIMINARY STATEMENT**

WHEREAS, State of North Dakota, State Department of Health (Department), notified Zenergy, Inc. (Zenergy), of Department's intention to institute an action against Zenergy for violations of North Dakota Century Code (N.D.C.C.) Chapter 61-28, Water Pollution Control and North Dakota Administrative Code (N.D.A.C.) Article 33-16, North Dakota Water Pollution Control rules, and in procedural compliance with N.D.C.C. Chapter 28-32, Administrative Agencies Practice Act, by serving upon Zenergy a Notice of Violation; and

WHEREAS, Zenergy timely filed an answer to the Department's Notice of Violation; and

WHEREAS, the Department and Zenergy believe it is in the public interest to resolve the matters raised in the Department's Notice of Violation without protracted litigation; and

WHEREAS, the Department and Zenergy desire to settle this matter with this fully executed Administrative Consent Agreement; and



WHEREAS, by entering into this Administrative Consent Agreement, Zenergy does not admit to any of the allegations contained in the Department's Notice of Violation nor does Zenergy waive any defenses, on any grounds related to claims that are not resolved by this Administrative Consent Agreement; and

WHEREAS, the Department and Zenergy agree that this Administrative Consent Agreement represents a just, fair, adequate and equitable resolution of the matters raised in the Department's Notice of Violation.

NOW THEREFORE, the Department and Zenergy do hereby mutually agree to be bound by the terms and conditions of this Administrative Consent Agreement.

#### STIPULATION

It is hereby stipulated and agreed as follows:

##### I.

That Zenergy admits to all of the jurisdictional allegations in the Department's Notice of Violation and this Administrative Consent Agreement.

##### II.

That Zenergy has its principal office located at One Warren Place, 6100 South Yale Avenue, Suite 1700, Tulsa, OK.

##### III.

N.D.C.C. § 61-28-06 provides in part:

#### **61-28-06. Prohibitions.**

1. It shall be unlawful for any person:

- a. To cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
  - b. To discharge any wastes into any waters of the state which reduces the quality of such waters below the water quality standards established therefor by the Department.
- 2. It is unlawful for any person to carry on any of the following activities unless the person holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
  - a. The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto without plans and specifications previously approved by the department.
  - ...
- 3. Notwithstanding any other provisions of this chapter, and except as in compliance with the provisions of this chapter, and any rules and regulations promulgated hereunder, the discharge of any wastes, or the violation of any water quality standards, by any person shall be unlawful. ...

#### IV.

N.D.A.C. § 33-16-01-02(2)(a)(b) provides in part:

#### **33-16-01-02. Acquisition of data.**

...

- 2. Any person who commences discharge of any waste through a point source into a surface water or conduct of any activity which requires a valid permit under North Dakota Century Code section 61-28-06 after the effective date of this chapter shall either:
  - a. File a completed national pollutant discharge elimination system application no less than one hundred eighty days prior to the day on which it is desired to commence operation of the waste disposal operation; or
  - b. File a completed national pollutant discharge elimination system application in sufficient time prior to the

commencement of waste disposal operations to allow the department to ensure compliance with any applicable water quality standards and effluent standards and the requirements of sections 306 and 208(b) and (c) of the Federal Water Pollution Control Act.

V.

N.D.A.C. § 33-16-02.1-08(1)(a)(2)(4)(5) provides in part:

**33-16-02.1-08. General water quality standards.**

1. Narrative standards.

- a. The following minimum conditions are applicable to all waters of the state except for class II ground waters. All waters of the state shall be:

...  
(2) Free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges or agricultural practices in sufficient amounts to be unsightly or deleterious.  
...

(4) Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to humans, animals, plants, or resident aquatic biota. For surface water, this standard will be enforced in part through appropriate whole effluent toxicity requirements in North Dakota pollutant discharge elimination system permits.

(5) Free from oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters.

## VI.

N.D.A.C. § 33-16-02.1-11(2)(4) states in part:

**33-16-02.1-11. Discharge of wastes.** On-surface discharges. The following are general requirements for all waste discharges. . . .

. . .

2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the water quality of water usage shall be discharged into the waters of the state.

. . .

4. Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible (701-328-5210) or the North Dakota hazardous materials emergency assistance and spill reporting number (1-800-472-2121) and provide all relevant information about the spill. Depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:
  - a. Take immediate remedial measures;
  - b. Determine the extent of pollution to waters of the state;
  - c. Provide alternate water sources to water users impacted by the spill or accidental discharge; or
  - d. Any other actions necessary to comply with this chapter.

## VII.

N.D.A.C. § 33-16-01-12(1)(a) states in part:

**33-16-01-12. Terms and conditions of national pollutant discharge elimination system permits.**

1. The following discharges into the waters of the state are prohibited:
  - a. . . . chemical, . . . waste.

. . .

## VIII.

The Department makes the following allegations:

- A. On Thursday, January 5, 2006, the Department was notified that a Zenergy pipeline, which is part of Zenergy-Wolf SWD 1 Injection System (a/k/a the Wolf/Safely Disposal System), transporting salt water failed.
- B. The leak was discovered January 4, 2006.
- C. The leak occurred due to a pipeline seam failure where a four-inch outside diameter pipe was fused together. It is estimated that approximately one million gallons of salt brine water and other material was released.
- D. The water had a concentration in excess of 300,000 milligrams per liter of total dissolved solids.
- E. A portion of the brine water flow traveled through a stock pond and a beaver pond and entered Charbonneau Creek.

## IX.

In response to the Department's allegations, Zenergy has done the following:

- A. After discovery of the leak, Zenergy dispatched trucks to remove contaminated water and installed pumps to remove contaminated water from the stock pond and the beaver pond.
- B. Zenergy also placed a barrier on Charbonneau Creek near the section line between [REDACTED] West. Prior to and during Zenergy's contamination recovery efforts, an unknown, but significant volume of brine water was released and traveled downstream.

C. Zenergy continued to remove contaminated water from the area and properly dispose of it, as directed by the North Dakota Industrial Commission and the Department.

D. Zenergy has installed a system of check valves and 24 hour web-based monitoring on the Zenergy Wolf/Safely Disposal System. Zenergy has informed the Department that monitoring system expenditures have exceeded \$200,000.00.

E. Zenergy retained the services of Buys & Associates ("Buys") to establish a Sampling and Analysis Plan, Remediation and Monitoring Plan, Spring Aquatic Biota Mortality Survey Report, Follow-up Turtle Mortality Survey Report, Phase II Site Investigation Report, and Revised Remediation and Monitoring Plan ("Remediation Plan"). Buys oversaw the implementation of the Remediation Plan. Zenergy has estimated that to date this Remediation Plan has resulted in expenditures of more than \$1,800,000.

F. The Department reviewed the Remediation Plan for the contaminated areas and provided comments and suggested changes to the plan. Zenergy agreed to incorporate the changes into the Remediation Plan. The Revised Remediation and Monitoring Plan ("Revised Remediation Plan") prepared by Buys, including the Department's changes, dated July 24, 2006 is attached to this stipulation and incorporated by reference.

G. Zenergy and the Department stipulate and agree that Zenergy has completed all work outlined in the Revised Remediation Plan subject to Zenergy's

ongoing obligation to maintain and complete any additional work required to accomplish the Revised Remediation Plan goals.

H. Zenergy representatives have attended several local community meetings to apprise area residents of the status of the on-going clean-up operations as well as the results of continual water sampling and analysis.

X.

Zenergy did not benefit from the alleged violations and has incurred significant expenses and losses as a result of the alleged violations.

XI.

Zenergy has cooperated with the Department and demonstrated a commitment to following through with the remediation to conclusion.

XII.

That allegations of the Department as set forth above may constitute violations of N.D.C.C. § 61-28-06 and N.D.A.C. §§ 33-16-01-02(2)(a)(b), 33-16-01-12(1)(a), 33-16-02.1-08(1)(a)(2)(4)(5) and 33-16-02.1-11(2)(4).

XIII.

That the Department and Zenergy desire to settle this matter on the following terms:

- A. That Zenergy will be levied a civil penalty of One-Hundred Seventy-one Thousand Seven Hundred and Fifty Dollars (\$171,750) for alleged violations listed above. Such penalty shall be assessed upon the following conditions:

1. That Seventy Thousand Dollars (\$70,000) shall be paid to the State of North Dakota upon execution of this Agreement as a penalty for alleged violations of North Dakota's water pollution laws as described above;
2. That no less than Seventy Thousand Dollars (\$70,000) shall be expended for supplemental environmental projects (SEPs) benefiting the environment or persons impacted by the salt water brine release. The Department acknowledges that it has received at the time of the execution of this agreement that it has received receipts showing expenditures benefiting impacted persons exceeding \$70,000. Zenergy and the Department agree that these expenditures satisfy this requirement, provided that ownership and rights to use the fresh water wells drilled with these expenditures be transferred to the landowners on whose land the wells were placed at the conclusion of the remediation, or within two years of the date of this agreement, whichever occurs first. This provision of this agreement is not satisfied until the transfers are made. If any landowner chooses not to accept transfer of the water supply to their ownership, then Zenergy, Inc. will be responsible for proper abandonment of any well(s) as required by N.D.A.C. § 33-18-01-06(19) and sealing or removal of distribution piping.



3. That Thirty-one Thousand and Seven Hundred Fifty Dollars (\$31,750) be suspended for a period of one year with said amount to be expunged upon condition that the remediation plan and consent agreement be fully complied with and that there be no future violations of N.D.C.C. ch. 61-28 and its implementing rules at this location for a period of one year from the date of this Administrative Consent Agreement.

B. That Zenergy will pay the Department's documented costs relating to engineering and regulatory oversight of the spill and remediation through the time of the signing of this agreement in the amount of \$53,308.84.

C. That Zenergy complete its obligations under the Remediation Plan attached to this agreement.

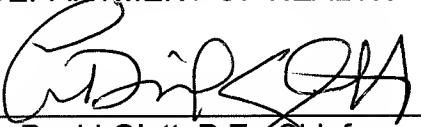
D. That Zenergy agrees to the entry of an Administrative Order in accordance with the terms contained herein.

E. That each party shall bear its own disbursements and attorney's fees.

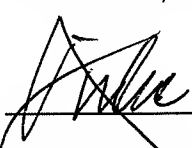
IN WITNESS WHEREOF, the parties have set their hands this 20 day of

September, 2007.

DEPARTMENT OF HEALTH

  
L. David Glatt, P.E., Chief  
Environmental Health Section

ZENERGY, INC.

  
Robert Zinke, President

RG 8/20/07  
RH 8/20/07